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Attorneys for Defendant ARISTA NETWORKS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC., Plaintiff, v. ARISTA NETWORKS, INC., Defendant.	Case No. 5:14-cv-05344-BLF (NC) **DEFENDANT ARISTA NETWORKS, INC.'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF ARISTA'S MOTION FOR RELIEF (ECF 449)** Judge: Hon. Beth Labson Freeman Date Filed: December 5, 2014 Trial Date: November 21, 2016

DEFENDANT ARISTA NETWORKS, INC.'S ADMINISTRATIVE MOTION FOR LEAVE
TO FILE A REPLY IN SUPPORT OF ARISTA'S MOTION FOR RELIEF (ECF 449)
Case No. 5:14-cv-05344-BLF (NC)

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1   Pursuant to the Northern District of California's Civil Local Rule 7-11, Defendant Arista

2   Networks, Inc. ("Arista") respectfully submits this Administrative Motion for Leave to File a

3   Reply in Support of Arista's Motion for Relief from Nondispositive Pretrial Order of Magistrate

4   Judge. *See* ECF 449. Arista submits this request with the supporting Declaration of Ryan K.

5   Wong ("Wong Decl.") and a Proposed Order per the Civil Local Rules. *See* Civil L.R. 7-11(a).

6   Cisco's Opposition (ECF 457) makes three false representations of fact that demand

7   correction and did not appear in Cisco's briefing before Magistrate Judge Cousins. Central to

8   Cisco's Opposition is its claim that the "comparison" that was essential to its preparation of its

9   last-minute "helpdesc" contentions "*was not possible* until Arista had produced both the accused

10   source code and operational switches running that code." ECF 457 at 1:10–11 (emphasis

11   original). Arista's reply brief demonstrates that this unsupported claim is false in two respects:

12   before Arista produced any switches in this case, (1) Cisco *already possessed* an operable Arista

13   switch "running that code," that is, the version of Arista software that corresponded to the source

14   code it relied upon for its contentions, and (2) the switches Arista produced in May 2016 *did not*

15   run the version of source code Cisco used for its "helpdesc" comparison. The third false

16   representation asserts that Arista refused to produce Arista switches in response to discovery

17   requests. Although Arista's motion to strike can and should be granted regardless of these false

18   assertions, such misstatements can develop a life of their own if allowed to stand or are

19   incorporated into Court orders.

20   These statements were not made in the papers submitted before Judge Cousins. There,

21   Cisco did argue in its brief that it needed the switches Arista produced in this litigation to provide

22   its responses (ECF 323-3 at 1:9–12), and Arista countered by demonstrating that Cisco had

23   numerous other Arista switches at its disposal from which it could have provided the

24   supplemental interrogatory response (ECF 362-4 at 2:5–6, citing ECF 306-12 at 5–7), just like it

25   provided copyright contentions concerning other aspects of the CLI. But the first time Cisco

26   claimed it needed an Arista switch *with software corresponding* to produced source code was at

27   the hearing before Judge Cousins, at which point Arista had no opportunity to investigate or

28   submit rebuttal evidence. In fact, Cisco had submitted no evidence to Judge Cousins supporting

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1　　this attorney argument. Now, in its current Opposition to Arista's Motion for Relief, Cisco has

2　　turned attorney argument into purported facts, without any evidentiary support. This brief reply

3　　explains why those asserted facts are false and the representations should never have been made.

4　　　　　Arista respectfully requests that the Court grant this Administrative Motion and consider

5　　the short reply brief and supporting declaration attached as **Exhibit A** (reply brief) and **Exhibit B**

6　　(supporting declaration) hereto as part of the briefing for Arista's Motion for Relief from

7　　Nondispositive Pretrial Order of Magistrate Judge. *See* ECF 449.

8　　　　　Arista sought Cisco's consent to the relief sought by this Administrative Motion, and also

9　　requested that Cisco withdraw its Opposition in view of the erroneous statements, but the parties

10　　were unable to reach an agreement. Cisco therefore opposes the relief Arista seeks in this

11　　Administrative Motion. *See* Wong Decl. ¶¶ 3–6.

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13　　Dated: August 19, 2016　　　　　　　　　　　KEKER & VAN NEST LLP

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16　　　　　　　　　　　　　　　　By:　　*/s/ Ryan K. Wong*
　　　　　　　　　　　　　　　　　　　　RYAN K. WONG

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18　　　　　　　　　　　　　　　　Attorney for Defendant
　　　　　　　　　　　　　　　　ARISTA NETWORKS, INC.

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EXHIBIT A

1 KEKER & VAN NEST LLP   SUSAN CREIGHTON, SBN 135528
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5 Email: rvannest@kvn.com;   ssher@wsgr.com
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6 mkwun@kvn.com

7

8 JONATHAN M. JACOBSON, NY SBN 1350495
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9 DAVID H. REICHENBERG (*pro hac vice*)
   WILSON SONSINI GOODRICH & ROSATI
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12 Email: jjacobson@wsgr.com; cpak@wsgr.com;
   dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

14
                        UNITED STATES DISTRICT COURT
15
                      NORTHERN DISTRICT OF CALIFORNIA
16
                              SAN JOSE DIVISION
17

18 CISCO SYSTEMS, INC.,   Case No. 5:14-cv-05344-BLF (NC)

19   Plaintiff,   **DEFENDANT ARISTA NETWORKS,**
                                                  INC.'S REPLY IN SUPPORT OF
20   v.   **ARISTA'S MOTION FOR RELIEF FROM**
                                                  NONDISPOSITIVE PRETRIAL ORDER
   ARISTA NETWORKS, INC.,   **OF MAGISTRATE JUDGE (ECF 449)**
21
              Defendant.
22   Judge: Hon. Beth Labson Freeman

23   Date Filed: December 5, 2014

24   Trial Date: November 21, 2016

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1   Cisco's Opposition to Arista's Motion for Relief (ECF 457) contains at least three

2   demonstrably false representations. Although the Court may grant Arista's Motion for Relief

3   based on the already-submitted evidence and argument that demonstrates that Cisco had at its

4   disposal long ago all the resources needed to disclosed the asserted "similarities" of "helpdesc"

5   text, misrepresentations in the record as clear as these require correction.

6   **1. *Before Arista produced any switches in this case, Cisco possessed an operable Arista***

7   ***switch running the same version of EOS as the source code Cisco used for its***
     "helpdesc" analysis.

8   Cisco argues that its disclosure of hundreds of allegedly similar "help descriptions" on the

9   last day of fact discovery was "based on a comparison of (i) the contents of Arista's source code

10   ***and*** (ii) the actual operation and testing of operable versions of Arista's switches running that

11   source code," and that "[t]his comparison ***was not possible*** until Arista had produced both the

12   accused source code and operational switches running that code." *See* ECF 457 at 1:8–11

13   (emphases original). Cisco also asserts that any comparison it could have done before Arista

14   produced switches in May 2016 "would have been on Arista devices that do not necessarily

15   correspond to the source code files that Arista produced in this case." *Id.* at 3 fn. 4.

16   In fact, before Arista made any switches available for inspection in this litigation, Cisco's

17   counsel and its experts already possessed at least two Arista switches for litigation purposes. *See*

18   Wong Reply Decl.[1] ¶ 3, Ex. 1 (May 17 and 18, 2016 email from Cisco's counsel confirming its

19   possession and use of two Arista switches). One of those two switches was an Arista 7150 switch

20   running EOS version 4.13.5. *Id.* (emails from Holmes on May 18, 2016, at 2:17 PM, and on

21   May 27, 2016, at 8:38 PM). EOS version 4.13.5 is the exact ***and only*** version of EOS source

22   code that Cisco and its expert cite to for their late-disclosed "helpdesc" allegations. *See* ECF 306-

23   9 (Cisco's May 27, 2016 "helpdesc" allegations); ECF 306-11 (Cisco's expert's Opening Report

24   showing the same citations to EOS version 4.13.5); Wong Reply Decl. ¶ 5. EOS version 4.13.5 is

25   also one of the versions Arista made available in source code format to Cisco in Fall 2015. Wong

26   ――――――――――――――――

27   [1] Declaration of Ryan Wong in Support of Arista's Reply in Support of its Motion for Relief
     From Nondispositive Pretrial Order of Magistrate Judge ("Wong Reply Decl."). As the May 17,
     2016 11:47 AM email reads, Cisco sought confirmation from Arista that it would not object to

28   "Cisco's experts' use/testing/analysis of Arista's products for purposes of this case."

DEFENDANT ARISTA NETWORKS, INC.'S REPLY IN SUPPORT OF ARISTA'S MOTION FOR
RELIEF FROM NONDISPOSITIVE PRETRIAL ORDER OF MAGISTRATE JUDGE (ECF 449)
Case No. 5:14-cv-05344-BLF (NC)

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1   Reply Decl. ¶ 5. So even if Cisco needed an operable Arista switch running EOS version 4.13.5

2   to compare to the version 4.13.5 EOS source code (which it did not), it already had such an Arista

3   switch before Arista produced any switches in this case.

4   **2.   The switches Arista produced in May 2016 could not have been relied upon for
         Cisco's "helpdesc" comparison because they did not run the same version of EOS**

5   **as the source code Cisco cited for that comparison (v. 4.13.5).**

6   Contrary to the whole premise of Cisco's Opposition, Cisco could not have relied upon

7   the May 2016-produced switches for a comparison of the EOS version 4.13.5 source code to any

8   Arista-produced Ethernet switches "running that source code." ECF 457 at 1:10. Neither of the

9   two switches that Arista produced on May 18, 2016 was running version 4.13.5 of EOS. In fact,

10   Cisco requested that those produced switches be loaded with the "latest publicly released version

11   of EOS." Wong Decl. ¶ 3, Ex. 1 at 11 (April 28, 2016 8:24 PM Holmes to Santacana email).

12   Specifically, Arista made two Arista switches available to Cisco on May 18, 2016: (1) an

13   Arista 7010T-48 ("7048") switch running EOS version 4.14.9.1M; and (2) an Arista DCS-7554

14   switch running EOS version 4.14.5.1F-SSU. Those facts are confirmed by Cisco's own technical

15   expert, Dr. Kevin C. Almeroth, who inspected the Arista switches and confirmed in his Opening

16   Expert Report that he had tested an "Arista DCS-7554 running EOS 4.14.5.1F-SSU" and an

17   "Arista 7010T-48 running EOS 4.14.9.1M." *Id.* ¶ 4, Ex. 2 (attaching the relevant pages from

18   Dr. Almeroth's Opening Expert Report). It therefore uncontested that neither of the two Arista

19   switches that Arista made available on May 18, 2016 ran the version of Arista EOS source

20   code—***version 4.13.5***—that Cisco exclusively cites to and relies on in its late-produced

21   "helpdesc" interrogatory response. *Id.* ¶ 5; *see also* ECF 306-9.

22   Furthermore, Dr. Almeroth's Opening Expert Report cites only to EOS 4.13.5 for his

23   "helpdesc" copying opinion. *See* Wong Reply Decl. *Id.* ¶ 5; ECF 306-11. He never cites to the

24   version of EOS that was loaded on the switches Arista produced in May 2016, versions 4.14.5.1F-

25   SSU or 4.14.9.1M. Therefore, Cisco's entire premise that it relied on the May 2016-produced

26   switches to compare the source code Arista produced ***and*** an operable switch "running that code"

27   (Opp. at 1:11) is ***false***. Cisco had that combination of code and switch for at least EOS version

28   4.13.5 well before Arista produced its switches in the litigation, and the switches that Arista

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1   produced in May 2016 did not run the version of EOS that Cisco actually used for its analysis.

2   Cisco's excuse for its late interrogatory response appears to be a product of expediency, not fact.

3.   *Arista never refused to produce representative samples of Arista switches; Cisco failed to engage in any meet and confer on the issue for over five months.*

5   Contrary to Cisco's opening statement in its Opposition, Arista did not "refuse[] to

6   comply with" Cisco's request to produce an operable switch. Opp. at 1:3–4. After Cisco

7   requested an "operable sample" of *every* Arista product, Arista responded with an offer to meet

8   and confer regarding this request because as written the request would have been enormously

9   burdensome and expensive (there are many dozens of variations of Arista switches). *See* Wong

10   Reply Decl. ¶ 3, Ex. 1 (April 26, 2016 emails between Holmes and Santacana). Cisco never

11   followed up on this invitation to confer until April 26, 2016, after Arista requested executable

12   versions of certain Cisco software. *Id.* Then, in response, the parties mutually agreed that Arista

13   would produce two exemplary switches (rather than *every* switch) and Cisco would produce the

14   requested software. *Id.* (April 26 to May 4, 2016 emails between Holmes and Santacana). The

15   assertion that Arista resisted the production of an exemplary switch is false.

16   As explained above and in the related papers on this motion, the content of and date of

17   exchange of Arista switches in this litigation is irrelevant to this Motion because uncontroverted

18   evidence shows that Cisco had numerous resources with which it could have analyzed Arista's

19   "helpdesc" text long before the close of discovery. Nevertheless, Cisco in its Opposition has

20   latched onto unsupported speculation first introduced orally at the hearing before Magistrate

21   Judge Cousins, and turned it into a series of false representations that serve as the centerpiece of

22   its argument in opposition. Such misstatements require correction. And the fact that Cisco would

23   endorse these misstatements is further evidence that Cisco has no excuse grounded in fact for its

24   late discovery response.

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DEFENDANT ARISTA NETWORKS, INC.'S REPLY IN SUPPORT OF ARISTA'S MOTION FOR
RELIEF FROM NONDISPOSITIVE PRETRIAL ORDER OF MAGISTRATE JUDGE (ECF 449)
Case No. 5:14-cv-05344-BLF (NC)

1   Respectfully submitted,

2   Dated: August 19, 2016   KEKER & VAN NEST LLP

3

4   By: /s/ Brian L. Ferrall
                                                    BRIAN L. FERRALL
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7   Attorney for Defendant
                                                    ARISTA NETWORKS, INC.
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EXHIBIT B

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6   mkwun@kvn.com

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8   JONATHAN M. JACOBSON, NY SBN 1350495
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13   Attorneys for Defendant ARISTA NETWORKS, INC.

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15   UNITED STATES DISTRICT COURT

16   NORTHERN DISTRICT OF CALIFORNIA

17   SAN JOSE DIVISION

18   CISCO SYSTEMS, INC.,   Case No. 5:14-cv-05344-BLF (NC)

19   Plaintiff,   **DECLARATION OF RYAN K. WONG
                                           IN SUPPORT OF DEFENDANT ARISTA
20   v.   NETWORKS, INC.'S REPLY IN
                                           SUPPORT OF ARISTA'S MOTION FOR
21   ARISTA NETWORKS, INC.,   RELIEF (ECF 449)**

22   Defendant.

23   Judge: Hon. Beth Labson Freeman

24   Date Filed: December 5, 2014

25   Trial Date: November 21, 2016

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1   I, RYAN WONG, declare and state as follows:

2   1.   I am an attorney licensed to practice law in the State of California and admitted to

3   practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and

4   counsel for Defendant Arista Networks, Inc. ("Arista") in the above-captioned action. I have

5   personal knowledge of the facts stated herein and, if called as a witness, I could testify

6   competently thereto.

7   2.   I submit this declaration in support of Arista's Reply Brief in Support of Arista's

8   Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge. *See* ECF 449.

9   3.   Attached as **Exhibit 1** to my declaration is a true and correct copy of an email

10   chain containing multiple email communications between counsel for Arista and Plaintiff Cisco

11   Systems, Inc. I have redacted portions of Exhibit 1 that contain confidential information and that

12   do not pertain to the matters raised in Arista's reply brief.

13   4.   Attached as **Exhibit 2** to my declaration is a true and correct copy of excerpts from

14   the Opening Expert Report of Dr. Kevin C. Almeroth, submitted on behalf of Cisco on June 3,

15   2016.

16   5.   The source code for EOS version 4.13.5 was made available to Cisco on a source

17   code review computer located at the offices of Keker & Van Nest LLP in August 2015. That

18   specific version of EOS source code—version 4.13.5—is the only version of EOS source code

19   cited in Exhibit H to Cisco's May 27, 2016 supplemental discovery response on its "helpdesc"

20   allegations (*see, e.g.*, ECF 306-9). EOS version 4.13.5 is also the only version of EOS source

21   code cited in "Exhibit Copying-6" to the Opening Expert Report of Dr. Kevin C. Almeroth (*see,*

22   *e.g.*, ECF 306-11).

23   Executed August 19, 2016, at San Francisco, California.

24   I declare under penalty of perjury under the laws of the United States of America that the

25   foregoing is true and correct.

26   */s/ Ryan K. Wong*
RYAN K. WONG

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DECLARATION OF RYAN K. WONG IN SUPPORT OF ARISTA'S REPLY
IN SUPPORT OF ARISTA'S MOTION FOR RELIEF (ECF 449)
Case No. 5:14-cv-05344-BLF (NC)

1100291

EXHIBIT 1

Ryan K. Wong

From:	Drew Holmes <drewholmes@quinnemanuel.com>
Sent:	Friday, May 27, 2016 8:38 PM
To:	Ryan K. Wong
Cc:	Eduardo E. Santacana
Subject:	RE: Cisco v. Arista

Ryan,

The corresponding hardware for the EOS 4.13.5 is an Arista 7150.

Drew

From: Drew Holmes
Sent: Wednesday, May 18, 2016 2:17 PM
To: 'Ryan K. Wong' <RWong@kvn.com>
Cc: Eduardo E. Santacana <ESantacana@kvn.com>
Subject: RE: Cisco v. Arista

Ryan,

That works. We have an Arista DCS-7048T-4S device running EOS 4.4.0 that our expert may rely on. I understand that we also have EOS 4.13.5, and I am checking on the corresponding hardware.

Here are the Cisco switches we have:

Device	PID
Catalyst 3560E	WS-C3560-24TS-S
Catalyst 4948E	WS-C4948E-S
Nexus 9372TX	N9K-C9372TX

Best,

Drew

From: Ryan K. Wong [mailto:RWong@kvn.com]
Sent: Tuesday, May 17, 2016 1:00 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: Eduardo E. Santacana <ESantacana@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

Can you please let us know what Arista switch(es) your expert is using/analyzing for purposes of this case, and the EOS version(s) on those devices? A mutual exchange of that information seems fair, as we have already disclosed the model and IOS version info of our expert's purchased Cisco router. If you agree to pass that information along to us, then we have an agreement on mutual no-objections per your email below.

Also, can you please let us know the model numbers of the three Cisco switches that are available for inspection, particularly since we may need to select particular switches for inspection beforehand?

Thanks,

Ryan

_____

Ryan K. Wong
Attorney at Law

KEKER & VAN NEST LLP

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633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

---

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Tuesday, May 17, 2016 11:47 AM
To: Eduardo E. Santacana
Cc: Ryan K. Wong
Subject: RE: Cisco v. Arista

Eduardo,

Cisco does not object to Arista's expert's use/testing/analysis of the Cisco router that he purchased for purposes of this litigation so long as Arista agrees that it likewise will not object to Cisco's experts' use/testing/analysis of Arista's products for purposes of this case.

Further, Cisco now has three Cisco switches that are available for inspection at Quinn Emanuel's San Francisco office. If you intend to inspect the switches we will need at least 24 hours' notice before hand.   Please note that we may not be able to have all three switches running at the same time given space, power, and equipment restraints.

Let us know if you have any questions.

Best,

Drew

Drew Holmes
Quinn Emanuel | Trial Lawyers
415-875-6322 (office)
510-384-2129 (cell)
drewholmes@quinnemanuel.com

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Wednesday, May 11, 2016 4:18 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: Ryan K. Wong <RWong@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

Thanks for the clarification. Our expert purchased the Cisco router on eBay. If I understand you correctly, the IOS version installed on that router should already be licensed, and therefore we don't need a new license from Cisco to use it. Please confirm if that understanding is correct. If so, this is a non-issue. If not, please either provide us with a new license for that IOS version as soon as possible, or (perhaps easier) confirm that Cisco will not object on licensing grounds to our expert using the Cisco router and the IOS version installed on it.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST LLP

415 773 6669 direct | vCard | esantacana@kvn.com
633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Wednesday, May 11, 2016 10:45 AM
To: Eduardo E. Santacana
Cc: Ryan K. Wong
Subject: RE: Cisco v. Arista

Hi Eduardo,

Did the IOS version that your expert acquired not come with its own end-user license? If your expert purchased a Cisco product with IOS, my understanding is that it should come with its own license already.   Thanks for the clarification.

Best,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Tuesday, May 10, 2016 12:30 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: Ryan K. Wong <RWong@kvn.com>
Subject: RE: Cisco v. Arista

Thanks again, Drew.

Per our call just now, here is the IOS version that we need a license for: Cisco IOS Software, 3700 Software (C3725-ADVENTERPRISEK9-M), Version 12.4(9)T, RELEASE SOFTWARE (fc1). Of course, let me know if you need any more information in order to produce the license.

You can download the vEOS versions we already have available at this link: ██ The link will expire on 5/17. We will produce these as natives with bates numbers as soon as possible. I am providing you the natives now so you have them.

As we discussed, I will also investigate which versions of IOS, IOS-XR, or NX-OS we would like from Cisco. You will investigate VIRL in case that is something that will help simplify our experts' needs.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST llp

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---

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Tuesday, May 10, 2016 6:54 AM
To: Eduardo E. Santacana
Cc: Ryan K. Wong
Subject: RE: Cisco v. Arista

Eduardo,

Here is a license that is valid until June 30 (attached).   As you know the product is no longer sold or serviced, so let me know if you run into any issues with the license.

Best,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Monday, May 09, 2016 3:34 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: Ryan K. Wong <RWong@kvn.com>
Subject: RE: Cisco v. Arista

I don't know what the maximum is, but why don't you put it down for the max and tell us what that is?

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST llp

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633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

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From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Monday, May 09, 2016 3:28 PM
To: Eduardo E. Santacana
Cc: Ryan K. Wong
Subject: RE: Cisco v. Arista

Thanks Eduardo. How long do you need the license for? They have time limits that have to be placed on them, which is why we will need that information.

Best,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Monday, May 09, 2016 1:19 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: Ryan K. Wong <RWong@kvn.com>
Subject: RE: Cisco v. Arista

Thanks, Drew. The FLEXlm ID is: ███████   The MAC is ███████████. The computer name is ████████████ .

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST llp

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633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Monday, May 09, 2016 10:51 AM
To: Eduardo E. Santacana; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Cc: ARISTA-KVN
Subject: RE: Cisco v. Arista

Eduardo,

The key is issued for a hostid (where the executable is installed).   If you already installed NCM, please let us know what the hostid is. If NCM is not installed, then please let us know what the MAC address is for the device you are using.

Best,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Monday, May 09, 2016 9:38 AM
To: Drew Holmes <drewholmes@quinnemanuel.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

Can you please provide license keys for the two versions today, as soon as possible?

Thanks,
Eduardo

Eduardo E. Santacana

Attorney at Law

KEKER & VAN NEST LLP

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---

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Friday, May 06, 2016 11:20 PM
To: Eduardo E. Santacana
Cc: ARISTA-KVN; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Subject: RE: Cisco v. Arista

Eduardo,

The password to decrypt is: ███████████

Drew

From: Drew Holmes
Sent: Friday, May 06, 2016 11:19 PM
To: 'Eduardo E. Santacana' <ESantacana@kvn.com>
Cc: 'ARISTA-KVN' <ARISTA-KVN@kvn.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Subject: RE: Cisco v. Arista

Eduardo,

The executables can be found at the following FTP:

      Host: ███████████████

      FTP Username: ██████

      FTP Password: ███████

      Port: ██

I'll send you a separate email with the decryption code.

Best,

Drew

From: Drew Holmes
Sent: Friday, May 06, 2016 9:39 AM
To: Eduardo E. Santacana <ESantacana@kvn.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>
Subject: RE: Cisco v. Arista

Eduardo,

We have versions 1.7 and 1.8 of NCM executables available.

Very truly yours,

Drew

Drew Holmes
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415-875-6322 (office)
510-384-2129 (cell)
drewholmes@quinnemanuel.com

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Thursday, May 05, 2016 10:08 AM
To: Drew Holmes <drewholmes@quinnemanuel.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

Thanks for these. Our expert's switch is running EOS 4.14.5.1F-SSU. I am working on compiling a complete list of vEOS versions that we have available. I propose that we exchange those lists next week when we discuss Tail-f, NCM, and the stipulation that Cisco has in mind. Once produced, vEOS will be available for download and use in a local environment.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

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633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Wednesday, May 04, 2016 10:10 PM
To: Eduardo E. Santacana; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Cc: ARISTA-KVN
Subject: RE: Cisco v. Arista

Eduardo,

Thanks for your email. Please see my responses in-line in red below.

7

Very truly yours,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Wednesday, May 04, 2016 9:27 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

It was a pleasure meeting you in person on Monday. I am writing about our discussion relating to working versions of the parties' products.

First, with respect to Tail-f and NCM executables, I asked that Cisco provide a list of executables that are available and for which environments so that Arista can choose representative versions for production. I initially made that request by letter dated April 25, 2016. Have you been able to collect those lists?

- We are still investigating the Tail-F and NCM executable versions that are available, and we'll get you that information as soon as we have it.

We also discussed a potential representative product stipulation. I explained that Arista is open to considering such a stipulation and you agreed to send over some thoughts on what Cisco envisions.

- We will endeavor to send you a proposal by early next week.

With respect to Arista's switches, I explained that we have ordered the same exact switch that our expert is using. I will let you know as soon as it arrives at our offices. I explained that Arista will make the switch available, as well as the larger one we already have, for inspection at our offices only. To the extent that you'd like to inspect the larger switch in the meantime, we can accommodate such a request provided we receive it by noon the business day prior to the date of inspection.

- We look forward to hearing from you when the smaller switch arrives.   Were you able to confirm which version of EOS your expert's switch is running?

Subject to its objections, Arista will produce the working versions of vEOS that we can locate through a reasonable and diligent search. Please note that the most recent versions are publicly available on Arista's website as well.

- Thank you very much. We have a few initial follow-up questions: (1) Which versions of vEOS are available? (2) When will they be available? (3) Will the vEOS versions you mentioned be available for download and testing on a local environment or will they only be accessible for inspection/testing through an Arista web-portal (or similar web-based service)?

With respect to working versions of EOS, we agreed that it would be best to discuss the scope of Cisco's Interrogatory 26 first, because it may obviate the need for Arista to produce every version of EOS in addition to the vEOS versions we already intend to produce. I look forward to having that discussion next week.

- We will review Arista's forthcoming response to Interrogatory No. 26 and will plan to continue our discussions thereafter. This issue may also be mooted if we can come to an agreement on representative products, which we'll be in touch about.

Finally, as with the Tail-f and NCM executables, could you please provide a list of available working versions of IOS, IOS-XR, and NX-OS? If it is possible to run these virtually, please let us know. As with the other executables, we do not intend to seek production of every single version that is available. We intend to select representative versions from a list of available ones.

- We are looking into this request and will get back to you.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

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From: Eduardo E. Santacana
Sent: Friday, April 29, 2016 2:56 PM
To: Drew Holmes
Cc: ARISTA-KVN; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Subject: RE: Cisco v. Arista

Drew,

That switch will not be available for inspection on Monday. I'd be happy to discuss details further on our call on Monday. Let's do 4pm. We can use this dial-in: 877-699-4804 x737-844.

As I stated earlier, I expect that you will be able to address our concerns with Cisco's responses to Arista's Requests for Production 171–173 on that same call.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST LLP

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From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Friday, April 29, 2016 2:47 PM
To: Eduardo E. Santacana
Cc: ARISTA-KVN; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Subject: RE: Cisco v. Arista

Thanks Eduardo. I am unfortunately not available this afternoon to call you, but I can call you Monday afternoon. In the meantime, can you at least please confirm that the larger switch in your office in San Francisco is available for inspection on Monday?

Very truly yours,

Drew

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Friday, April 29, 2016 2:10 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Subject: RE: Cisco v. Arista

Drew,

We are investigating your requests. Please give me a call this afternoon to discuss further details relating to inspection of switches and your request for a mutual representative product stipulation.

In an April 25 letter, I asked that Cisco be prepared to discuss Cisco's deficient responses to Arista's Requests for Production 171–173. On our April 27 meet and confer call, Cisco was unable to discuss them. Arista's requests seek executable copies of the NCM and Tail-f products. Cisco agreed to investigate the matter further. We are generally available today to discuss Cisco's production of executable files.

In addition, during the call, Cisco confirmed that it will substantially complete production of Tail-f-related documents and Mr. Moberg's custodial files by Monday, May 2. Cisco also confirmed that it would complete production of Huawei-related documents that do not contain Huawei-confidential information in them by Monday, May 2. I explained that *all* Huawei-related documents must be produced by no later than May 10, given the May 19 deposition date for Mr. Lang, who is designated to testify on behalf of Cisco on Huawei-related topics.

Thanks,
Eduardo

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST LLP

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From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Thursday, April 28, 2016 8:24 PM
To: Eduardo E. Santacana
Cc: ARISTA-KVN; Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Subject: RE: Cisco v. Arista

Dear Eduardo,

Following-up on yesterday's meet and confer, we have a few questions, requests, and a proposal for your consideration.

First, we understand that you currently have one large (~500 pound) Arista switch at your office in San Francisco and that your expert has a smaller Arista switch in his/her possession. Please let us know the make, model, and EOS version number for each of these devices.

Second, Cisco would like to inspect the "larger" switch in your possession on Monday. Please confirm it will be available.

Third, Cisco requests that Arista produce the same make/model switch that is in Arista's expert's possession running the latest publicly released version of EOS to my attention at Quinn Emanuel's office in San Francisco. We will, of course, keep that device in a secure location at Quinn Emanuel's San Francisco office and treat it as highly confidential under the protective order.

Fourth, in an effort to streamline the case for both parties Cisco proposes that the parties enter into a mutual representative product stipulation for purposes of the copyright and patent causes of action that would apply to both Arista products as well as Cisco products. If this is something that Arista is willing to consider, please let us know, and we can send you a proposed stipulation.

Very truly yours,

Drew

Drew Holmes
Quinn Emanuel | Trial Lawyers
415-875-6322 (office)
510-384-2129 (cell)
drewholmes@quinnemanuel.com

From: Eduardo E. Santacana [mailto:ESantacana@kvn.com]
Sent: Tuesday, April 26, 2016 3:10 PM
To: Drew Holmes <drewholmes@quinnemanuel.com>; Cisco-Arista <Cisco-Arista@quinnemanuel.com>; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)' <Cisco-AristaCopyrightTeam@kirkland.com>
Cc: ARISTA-KVN <ARISTA-KVN@kvn.com>
Subject: RE: Cisco v. Arista

Drew,

Arista objected to Cisco's Requests for Production 105 and 106 on October 22, 2015, but nevertheless invited Cisco to meet and confer on these requests to determine if there is an acceptable scope of production for both parties. This is the first time Cisco has accepted Arista's invitation. We are more than happy to discuss these requests with you. Tomorrow at 2pm is fine, provided Cisco will first be able to address my letter of yesterday asking Cisco to meet and confer on Arista's Requests 171–173, which seek executable copies of Tail-f and NCM.

In addition, we would like an update on Cisco's production of Tail-f and Huawei-related documents. We thought Tail-f document production would be complete by now. And we have not heard anything regarding Cisco's progress in reviewing the documents it obtained from Orrick, which Cisco promised it would promptly send to Huawei for review.

Thanks,

Eduardo

Eduardo E. Santacana
Attorney at Law

KEKER & VAN NEST LLP

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633 Battery Street, San Francisco, CA 94111-1809 | 415 391 5400 main | kvn.com

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From: Drew Holmes [mailto:drewholmes@quinnemanuel.com]
Sent: Tuesday, April 26, 2016 2:19 PM
To: ARISTA-KVN
Cc: Cisco-Arista; ''Cisco-AristaCopyrightTeam@kirkland.com' (Cisco-AristaCopyrightTeam@kirkland.com)'
Subject: Cisco v. Arista

Dear Counsel,

When will Arista be providing the samples and executables requested in RFP Nos. 105 and 106? As you know, these RFPs were served on Arista over seven months ago – on September 18, 2015 – and Arista's refusal to comply with its discovery obligations is impeding Cisco's ability to prosecute its case. Please confirm by Friday April 29, 2016, that Arista will be producing the requested samples and executables and that it will do so by May 4, 2016. If it is Arista's position that it will continue to refuse to produce the requested samples and executables, we are available to meet and confer tomorrow at 2:00 pm PT.

Very truly yours,

Drew

Drew Holmes
Quinn Emanuel | Trial Lawyers
415-875-6322 (office)
510-384-2129 (cell)
drewholmes@quinnemanuel.com

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

       Plaintiff,

   v.

ARISTA NETWORKS, INC.,
       Defendant.

Case No. 5:14-cv-05344-BLF (PSG)

OPENING EXPERT REPORT OF KEVIN ALMEROTH
REGARDING COPYING

SUBMITTED ON BEHALF OF CISCO SYSTEMS, INC.

<u>**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION**</u>
<u>**AND SOURCE CODE**</u>

71.   In support of my opinions, and during the process of preparing this report, I personally inspected and tested three different Arista switches running EOS, pictures of which I have provided along with this report. I have reproduced some images of the Arista switches I inspected and tested below as examples:

(Arista 7010T-48)

(Arista DCS-7554)

```
Aboot 4.0.4-2086886


Press Control-C now to enter Aboot shell
Booting flash:/EOS-4.14.9.1M.swi
[    7.284686] Starting new kernel
Switching rootfs

Welcome to Arista Networks EOS 4.14.9.1M
Mounting filesystems:  [  OK  ]
Starting udev: [  OK  ]
Setting hostname localhost:  [  OK  ]
Entering non-interactive startup
Starting ProcMgr: [  OK  ]
Starting EOS initialization stage 1: [  OK  ]
ip6tables: Applying firewall rules: [  OK  ]
iptables: Applying firewall rules: [  OK  ]
iptables: Loading additional modules: nf_conntrack_tftp [  OK  ]
Starting system logger: [  OK  ]
Starting NorCal initialization: [  OK  ]
Retrigger failed udev events[  OK  ]
Starting mcelog daemon
Starting EOS initialization stage 2: [  OK  ]
Starting Power On Self Test (POST): [  OK  ]
Starting crond: [  OK  ]
Completing EOS initialization (press ESC to skip): [FAILED]
EOS will continue to boot without waiting for full initialization.
You may not be able to login using normal accounts, but you may be
able to login as root.
Model: DCS-7010T-48
Serial Number: HSH16130550
System RAM: 3907136 kB
Flash Memory size:  3.3G

Arista Networks EOS 4.14.9.1M
localhost login: █
```

(Arista 7010T-48 running EOS 4.14.9.1M)

```
Arista Networks EOS 4.14.9.1M
localhost login:

Aboot 3.0.3-1262453


Press Control-C now to enter Aboot shell
Booting flash:EOS-4.14.5.1F-SSU.swi
[    9.586323] Starting new kernel
Switching rootfs

Welcome to Arista Networks EOS 4.14.5.1F-SSU
Mounting filesystems:  [  OK  ]
Starting udev: [  OK  ]
Setting hostname localhost:  [  OK  ]
Entering non-interactive startup
Starting ProcMgr: [  OK  ]
Starting EOS initialization stage 1: [  OK  ]
ip6tables: Applying firewall rules: [  OK  ]
iptables: Applying firewall rules: [  OK  ]
iptables: Loading additional modules: nf_conntrack_tftp [  OK  ]
Starting system logger: [  OK  ]
Starting NorCal initialization: [  OK  ]
Retrigger failed udev events[  OK  ]
Starting isshd: [  OK  ]
Starting mcelog daemon
Starting EOS initialization stage 2: [  OK  ]
Starting Power On Self Test (POST): [  OK  ]
Starting crond: [  OK  ]
Completing EOS initialization (press ESC to skip): [  OK  ]
Model: DCS-7500E-SUP
Serial Number: JPE14211632
System RAM: 16012348 kB
Flash Memory size:  3.4G

localhost login: █
```

(Arista DCS-7554 running EOS 4.14.5.1F-SSU)

C.   EOS Program

81.   In order to understand and analyze Arista's EOS, I have reviewed its programs on

numerous occasions.

82.   Arista's EOS program provides the EOS CLI and contains specific programs and

functions. For example, EOS includes programs to generate a command line interface and

experts at trial. I also reserve the right to modify or to supplement my opinions as a result of

ongoing expert discovery or testimony at trial.

I certify under penalty of perjury that the foregoing is true and correct.

By: _Kevin C Almeroth_____

Dr. Kevin C. Almeroth

June 3, 2016